

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Criminal Appeal No. 1963 of 2001
(Old No. 179/1995)

Date of decision: 24-09-03

For the approval of:

Hon'ble Chief Justice S.H. Kapadia.

Hon'ble Mr. Irshad Hussain, J.

-Whether the order/judgment should be sent to the
reporters for reporting? ()

-Whether the reporters be allowed to see the
judgment? (Yes)

Tangwan
P.P.S.

(Reserved Judgment)

C.J.'s Court

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Crl. Appeal No. 1963 of 2001
(Old No. 179/1995)

1. Bali Ram S/o Devi Ram,	]	
2. Kundan Ram S/o Devi Ram,	]	
3. Pappu Bela S/o Shahadat,	]	
4. Harvinder Singh S/o Om Prakash,	]	
All Residents of Nariman Chauraha,	]	
Kathgodam, Police Station-Haldwani,	]	
District Nainital.	]	----- Appellants
<u>Vs.</u>		
State of U.P.	]	----- Respondent

Shri Navneet Kaushik learned Counsel for the appellants	]
i/b Shri Rakesh Thapaliyal, Advocate.	]
Shri S.P.S. Panwar, Govt. Advocate for the State.	]

Coram: **Hon'ble S.H. Kapadia, C.J.**
 Hon'ble Irshad Hussain, J.

Date: 24 September, 2003:

ORAL JUDGMENT: [Per Hon. Chief Justice]

1. This appeal has been filed by Bali Ram, Kundan Ram, Harvinder Singh and Pappu Bela, residents of nariman Chauraha, Kathgodam, Police Station Haldwani, District Nainital. All the appellants were found guilty of offences under Sections 302/149 I.P.C. Bali Ram was separately charged and found guilty of offence under Section 302 I.P.C. Each one of them, were sentenced to undergo rigorous imprisonment for life.

2. The prosecution case, briefly, was as follows.

On 27th June, 1991 at 05:00 P.M. Ganpat Ram (P.W.1) father of the deceased Nand Lal had gone to fetch water from the tap near the shop "Verma Tailors" where Nand Lal used to work. At that time, Bali

Ram started teasing a mentally retarded young boy by the name Shankar. This was objected to by Nand Lal. This resulted in quarrel between Bali Ram and Nand Lal. Bali Ram left threatening to come back with his brothers and friends to teach a lesson to Nand Lal. Around 08.00 P.M. on the same day, Bali Ram with Kundan, Pappu Bela, Harvinder (appellants) came back. Kundan dragged Nand Lal towards the road, resisted by Nand Lal. In the process, Nand Lal fell and he was stabbed in the stomach with the knife by Bali Ram despite shouts from Ganpat Ram (P.W.1). Bali Ram thereafter fled with the boys. Nand Lal was taken to Haldwani Hospital. He died on the way. The Doctor pronounced him dead. He was not admitted into the Hospital. Thereafter Ganpat Ram, P.W.1 went to the Police Outpost at Kathgodam at 10:30 P.M. on the same day and lodged the complaint. On 28th June, 1991, the Inquest Report (Ex. Ka-5) was made by Sub-Inspector Surendra Singh, P.W.6 (Investigating Officer) at Haldwani Government Hospital and forwarded the body through H.C. Raghunath Singh. The post-mortem was done by Dr. S.P. Ojha (P.W.5) at Haldwani Hospital on 28th June, 1991 at about 01:00 P.M.

In the eight persons (including the appellants) were charged by III Addl. Sessions Judge, Nainital on 10th January, 1992 for committing offences punishable under Sections 148, 302/149 I.P.C. Bali Ram (appellant no.1) was also separately charged under Section 302 I.P.C. They all pleaded not guilty.

3. The prosecution examined Ganpat Ram (P.W.1); father of Nand Lal (deceased); Ajay Kumar Verma, (P.W.2) declared hostile; Rajendra Singh (P.W.3) also declared hostile; Bhoj Raj Singh (P.W.4)- Head Costable at Kathgodam Police Outpost, who registered the F.I.R. on 27th June, 1991; Dr. S.P. Ojha (P.W.5), who did the post-mortem at Haldwani Civil Hospital and Sub-Inspector Surendra Singh (P.W.6), who made the Inquest Report and who was Incharge of Kathgodam Police Outpost on 27th June, 1991. Of these witnesses, informant P.W.1- Ganpat Ram supported the prosecution case by stating that on 27th June, 1991 at 05.00 P.M. when he had gone to fetch water at the

tap near Verma Tailor, where Nand Lal worked. He saw Nand Lal preventing Bali Ram for teasing Shankar a mentally retarded boy which led to a quarrel between Nand Lal and Bali Ram. That Bali Ram had threatened Nand Lal. That around 08:30 P.M., Bali Ram returned with a group of boys from whom P.W.1 could see Kundan, Pappu Bela and Harvinder Singh apart from Bali Ram. That Kundan had dragged Nand Lal across the road. That Nand Lal resisted Kundan and in the process Nand Lal fell and when he fell he was stabbed in the stomach by Bali Ram, who was carrying a knife. That P.W.1 tried to save his son Nand Lal but he failed. That P.W.1 took Nand Lal to Haldwani Government Hospital. However, Nand Lal died on the way to Hospital. In his evidence, Dr. Ojha (P.W.5) has deposed that there was an incised wound 3.5 C.M. x 1.5 C.M. on the right side of the chest and the injury was sufficient to cause death in ordinary course. P.W. 5 was not cross-examined. The evidence also shows that after Nand Lal was pronounced dead, P.W.1 came back to Kathgodam Police Outpost; that he dictated his complaint to a Scribe- Prem Shankar; that the F.I. R. was registered by Head Constable Bhojraj Singh, P.W.4; the General Diary entry was made by P.W.6. The evidence of the Investigating Officer shows that he had made the Inquest Report (Ex.Ka-5) on 28th June, 1991 and he had sent the dead body for post-mortem with Constable Raghunath Singh; that he had visited the site on 15th July, 1991 as his leg was injured; that he had prepared the site plan (Ex. Ka-8) as per the statement of P.W.1.

4. The III Addl. Sessions Judge, Nainital, after considering the above evidence, came to the conclusion that four out of above mentioned eight accused were guilty of offence punishable under Section 302/149 I.P.C.; that Bali Ram was convicted of offence under Section 302 I.P.C. and accordingly all the appellants were convicted and each of them are sentenced to undergo life imprisonment as stated above. The remaining four accused i.e. Kanu, Jeevan, Kamleshwar and Guddu were given benefit of doubt and acquitted.

5. Being aggrieved, Bali Ram, Kundan, Harvinder Singh and Pappu Bela have come by way of appeal.

6. Heard Shri Navneet Kaushik, learned counsel for the appellants and Shri S.P.S. Panwar, learned Government Advocate for the State.

7. We have carefully considered the evidence on record, the circumstances and the probabilities of the case.

FINDINGS

8. As stated above, in this case, Bali Ram has been charged for offence under Section 302 I.P.C. and separately he has been charged with Kundan, Harvidner Singh and Pappu Bela under Section 302/149 I.P.C.

9. We would like to discuss the charges levelled against Bali Ram under Section 302 I.P.C. Learned counsel for Bali Ram (appellant) submitted that the identity of Bali Ram is not established. In this connection, he submitted that the parentage of Kundan and Kanu were supplied in the F.I.R. by a Police Constable at Kathgodam Police Outpost; that P.W.1 did not know the father of Kundan and Kanu (brothers of Bali Ram) and yet P.W.1 has named the father of Bali Ram, which is not possible. Hence, the identity of Bali Ram is not established. He added that, P.W.1 was not a wholly reliable witness because in Ex. Ka-1 he named eight accused but in his evidence he has named Bali Ram, Kundan, Harvinder Singh and Pappu Bela. That, even parentage of Guddu, Jiwan and Kamleshwar are not given in Ex. Ka-1. That, in Ex. Ka-1 he has not mentioned that injury was caused by a knife in the stomach, though he says so in his evidence. Hence, Bali Ram's identity is not established. We do not find any merit in this argument. The evidence of P.W.1 of having seen Bali Ram is clinching. P.W.1 saw Bali Ram twice in the span of 3½ hrs. P.W.1 had seen Bali Ram at 05:00 P.M. when he had altercation with Nand Lal who tried to prevent Bali Ram from teasing Shankar. This was also witnessed by P.W.2. It is corroborated by Ex. Ka-1 and Ex. Ka-2. Further, P.W.2 had seen Bali Ram return at 8:30 P.M. with Kundan,

Pappu Bela and Harvinder Singh, which is also supported by P.W.2. hence, identity of Bali Ram is established. Lastly, P.W.1 had identified Bali Ram even in Court. This has not been challenged. Therefore, Ganpat Ram's evidence cannot be disbelieved to the extent of his identifying Bali Ram.

10. It was next contended that P.W.1 was not at the scene of offence. In this connection it was pointed out that in his evidence P.W.1 had dropped Kanu, Jeewan, Kamleshwar and Guddu although these names find place in Ex. Ka-1. It was argued that such a witness is not wholly reliable and conviction cannot be based on the testimony of such a witness. That, it shows that P.W.1 wanted to implicate in all eight/nine persons. That, he had a minor-image in his mind as he had lost his son. That, even the Lower Court has acquitted some of the accused and, therefore, evidence of P.W.1 should be rejected, as he was not at the scene of occurrence. In this connection, reliance was also placed on Ex.Ka- 8 (site plan) to show that at point "A" there was no light and, therefore, when the shops had closed at 8:30 P.M., there was no light available for P.W.1 to have witnesses Bali Ram stabbed his son with a knife in the stomach. It was further submitted that P.W.1 had exaggerated and had lied when he has deposed that his son Nand Lal was dragged for 30 steps before being stabbed by Bali Ram. It was pointed out from site plan (Ex. Ka-8) that distance between Verma Tailors and point "A" was only six steps and, therefore, Bali Ram could not have dragged Nand Lal for 30 steps. It was further argued that P.W.1 was at point "D" in the site plan from where P.W.1 could not witness the incident, as there was no light. It was submitted that above contradictions about number of persons, number of steps and position of light assume importance when P.W.1 is the sole witness of occurrence. We do not find any merit in this argument. As stated above, our discussion at this stage is restricted to charge levelled against Bali Ram under Section 302 I.P.C. P.W.1 was the father of Nand Lal. On 27.06.1991 at 5:00 P.M. he had come to fetch water near shop of Verma Tailors. Nand Lal was employed in that shop. P.W.1

saw Bali Ram teasing Shankar, a mentally retarded young boy. P.W.1 saw Nand Lal preventing Bali Ram from teasing, resulting in a quarrel. Bali left but threatened to come back with his brothers and friends. Bali Ram returned after 3½ hrs. with Kundan, Harivender Singh and Pappu Bela, P.W.1 saw Kundan dragging Nand Lal who tried to come out of the grip of Kundan and in the process Nand Lal fell when he was stabbed with a knife in the stomach by Bali Ram. This evidence of P.W.1 is corroborated by F.I.R., General Diary, Postmortem Report. It is supported by evidence of P.W.5. It is partly supported by evidence of P.W.2. The postmortem report shows that chest cavity was full of blood. The ante-mortem injuries show how deep the wound was. It explains absence of blood on the mud. It indicates that injury was inflicted with precision. Moreover, the evidence of P.W.1 on the above points has not been challenged. In this case, the evidence of P.W.1 and P.W.2 (to the extent of seeing Bali Ram at 05:00 P.M. and at 08:30 P.M. with Kundan, Harvinder Singh and Pappu Bela) is corroborated by F.I.R. Both P.W.1 and P.W.2 have confirmed the incident of teasing of Shankar by Bali Ram at 05:00 P.M. on 27.06.1991 and further evidence of P.W.5 to the extent that injuries were sufficient to cause death also corroborates the evidence of P.W.1 and P.W.2. The nature of ante-mortem injuries (viz. incised wound) 3.5cm. x 1.5cm on right hand side of the chest cavity and that it was caused by a weapon as evidenced by Dr. Ojha (P.W.5) fully corroborates the nature of occurrence. Even the time of occurrence at 08:30 P.M. is corroborated by Inquest Report, F.I.R. and entry in General Diary. Even the crime case No. 532 mentioned in Inquest Report shows that F.I.R. was lodged at Kathgodam Police Outpost on the complaint of P.W.1. Hence, we find P.W.1 was a truthful witness. We find that he was present at the scene of occurrence at 05:00 P.M. and at 08:30 P.M. on 27.06.1991. Even from the site plan prepared by the Investigating Officer, we have reason to believe that there was sufficient light at the scene for P.W.1 to have witnessed the scene of occurrence. The site plan is prepared by the Investigating Officer. He had visited the site.

At point “D” there was a Mercury Light. Further light emanated from the shop of Verma Tailors. Hence, P.W.1 could not be disbelieved. It has been argued that distance between Verma Tailors and point “A” was only 6 steps and, therefore, Kundan could not have dragged Nan Lal for 30 steps. We do not find any merit in this argument. It depends on the direction, the struggle which ensued between Kundan and Nand Lal, who prevented Kundan from dragging and the line resorted to. The dragging need not be in a straight line. Hence, the evidence of P.W.1 is fully corroborated and unchallenged. His evidence is fully reliable. P.W.1 has proved that he was at the scene of occurrence and had witnessed the commission of offence by Bali Ram (appellant No.1).

11. It was next contended that there are several discrepancies in the evidence of P.W.1 which show that he had not taken his deceased son Nand Lal to Haldwani Hospital. It was argued that in his evidence P.W.1 has stated that when he took his son to Haldwani Hospital he was accompanied by one Ajay Kumar and Guddu, who have not been examined. That, there is no Memo of Accident Case or Medical Legal Case issued by the Hospital. That there is no corroboration of the evidence of P.W.1 when he says that he took his son to the Hospital. That, there is no evidence to show that P.W.1 got Nand Lal admitted into Hospital. It was further argued that even the incident in all probability did not take place at Kathgodam. In this connection, it was argued that if the incident had taken place at Kathgodam, why P.W.1 had taken his son who was badly injured to Haldwani Hospital, which was at far off place. It was further argued that on the doctor declaring Nand Lal, dead, P.W.1 remained in the Hospital for about one hour when he returned to Kathgodam Police Outpost to lodge his complaint, although the Kotwali came on the way between the Hospital and Kathgodam Police Outpost. It was argued that the Kotwali fell between Police Outpost at Kathgodam and Haldwani Hospital and yet the F.I.R. was not lodged at Kotwali but at Kathgodam. Hence, P.W.1 had not taken the deceased to the Hospital. We do not find any merit in

this argument. Firstly, Nand Lal died on the way to the Hospital. Secondly, Nand Lal was never admitted into the Hospital. Hence, there was no need to issue the Memo. Thirdly, in cross-examination, P.W.1 has explained that there were no good Hospital in Kathgodam and, therefore, he had taken his son to Haldwani Hospital. This shows that P.W.1 was a natural witness. Lastly, the incident had taken place at Kathgodam and, therefore, P.w.1 had lodged his complaint at Kathgodam Police Outpost. That, this evidence of P.W.1 is also corroborated by Inquest Report (Ex.Ka-5). It indicates presence of a Police Constable in the Hospital. The Inquest Report shows presence of Police Constable Raghu Nath Singh at the mortuary. Therefore, there is no reason to disbelieve P.W.1 . P.W.1 had lost his son. He was upset. Under such circumstances his presence in the Hospital for about one hour, is natural. We are satisfied that incident took place at Kathgodam and P.W.1 had taken his son to the Hospital at Haldwani.

12. It was next argued that this case involves single blow on the body of the deceased. That, therefore, there was no intention to murder. That, the intention of Bali Ram was to teach a lesson and not to murder. That, there was no cruelty on the part of Bali Ram; that Bali Ram (appellant No.1) had not knowledge that the said injury would cause death. That, therefore, the conviction be shifted from Section 302 to Section 304 (Part-II) I.P.C. We do not find any merit in this argument. Firstly, the said injury was inflicted with precision. Secondly, it was inflicted with knife. Thirdly, the ante mortem injuries show how deep the injury was. Fourthly, the evidence shows that the deceased was dragged by Kundan and the deceased had resisted and when the deceased fell, Bali Ram had stabbed the knife in the chest of the deceased, which injury was sufficient to cause death in ordinary course (evidence of P.W.5). Hence, the seat of injury, the force of the blow, the posture of the victim all show the intention of Bali Ram to murder Nand Lal. Similarly, as stated above, the first incident took place at 05:00 P.M. when Bali Ram threatened to come back, he came after 3½ hrs. with the knife, the deceased was dragged, he had resisted

and when he fell on his back, he was stabbed. This circumstance shows that Bali Ram had intention to murder Nand Lal. P.W.5 has deposed that the injury was sufficient to cause death in ordinary course. Therefore, the case falls under Clause- Thirdly to Section 300 I.P.C. and therefore this substantive charge u/s 302 is proved beyond reasonable doubt against Bali Ram.

13. Now coming to the charge levelled against, Kundan, Harvinder Singh and Pappu Bela for offence under Section 302/149 I.P.C., the Lower Court was found them guilty. However, we are of the view that Kundan, Harvinder Singh and Pappu Bela are entitled to benefit of doubt for the following reasons. Firstly, the three appellants came to the scene of occurrence at 08:30 P.M. on 27.06.1991 with Bali Ram who carried a knife with him. However, there is no material to show that Bali Ram had exhibited the knife to others. There is no evidence to show that Kundan, Harvinder Singh and Pappu Bela were aware that Bali Ram had carried a knife with him. Secondly, the first incident had taken place at 05:00 P.M. and the second incident took place after 3½ hrs. Yet, when Kundan, Harvinder Singh and Pappu Bela came they were not carrying any arms. Thirdly, not overt act is attributed to Harvinder Singh and Pappu Bela. Fourthly, although Kundan facilitated Bali Ram by dragging the deceased for a few paces, Kundan did not use any weapon to assault the deceased. In this case, the inflicted injury was caused by a single blow inflicted by Bali Ram. In the circumstances, there is no sufficient evidence of knowledge or common object on the part of Kundan (appellant No.2), Harvinder Singh (appellant No.4) and Pappu Bela (appellant No.3) to murder Nand Lal. Hence, we give benefit of doubt of Kundan (appellant No.2), Harvinder Singh (appellant No.4) and Pappu Bela (appellant No.3).

14. Accordingly, we pass the following order:-

ORDER

(a) Appellant stands partly allowed. Although we acquit Kundan (appellant No.2); Harvinder Singh (appellant No.3) and Pappu Bela (appellant No.4) for the offence punishable under Section 302 read with Section 149 I.P.C. and although we set-aside their conviction and sentence therefore, we uphold the conviction and sentence of the life imprisonment on Bali Ram- appellant No.1, for offence punishable under Section 302 I.P.C.

(b) Bali Ram-appellant No.1, is on bail. He shall be taken into custody forthwith to serve out the sentence.

(c) Kundan (appellant No.2); Pappu Bela (appellant No.3) and Harvinder Singh (appellant No.4) are also on bail. Their bail bonds are cancelled. Their sureties are hereby discharged.

Let copy of this judgment alongwith the record of the case be sent to the Court below for compliance. The Court below will give compliance report within two months from the date of the receipt.

(Irshad Hussain, J.) (S.H. Kapadia, C.J.)

Melkani
P.S.